

**Davis & Newcomer Elevator Co. and International
Union of Elevator Constructors, AFL-CIO.**
Case 8-RC-15018

December 12, 1994

DECISION AND ORDER REMANDING

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election conducted by mail from March 28, 1994, until April 15, 1994, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement.

The Board has reviewed the record in light of the exceptions and briefs and has adopted the Regional Director's findings and recommendations only to the extent consistent with this decision.¹

A mail ballot election was conducted from March 28 until April 15, 1994. The tally of ballots issued on April 18, 1994, indicates that of approximately eight eligible voters, seven cast ballots, of which four were cast for and three against the Petitioner. There was one void ballot. The Employer alleged in its Objection 1, *inter alia*, that sufficient time existed following receipt of the void ballot in the Regional Office for the election clerk to send a duplicate election kit to the voter who cast the void ballot according to the procedure outlined in the Board's Casehandling Manual. The Regional Director recommended overruling Objection 1, and the Employer excepted to the recommendation. For the reasons set forth below, we find merit in the Employer's exceptions.

On March 28, the Regional Office mailed an election kit to each eligible voter on the election eligibility list. On April 1, the Regional Office received only the ballot portion of a mail ballot envelope. The identification stub, containing the case number, the signature line for the voter's signature, and the "key" number corresponding to the employee's name on the eligibility list was not attached. "Several days later," the Regional Office received an unsigned identification stub containing the case number and key number. Using the key number and the eligibility list, the election clerk determined that the stub came from the ballot of employee Daniel Kurtz. No duplicate election kit was sent to Kurtz.

¹ We adopt the Regional Director's recommendation that the Employer's Objections 2 through 6 be overruled.

On April 18, the ballots were counted at the Regional Office. As noted above, there were approximately eight eligible voters. Of the seven ballots counted, four were cast for, and three against, the Petitioner. The Board agents voided the remaining ballot of Kurtz because the identification stub had been separated, and the stub was unsigned. When the Employer's representatives arrived at the Regional Office after the count, the Board agents informed them that the Kurtz ballot was "in two pieces," and that it had been voided because the stub was unsigned. With Kurtz' ballot voided, the Petitioner was certified based on the four to three tally.

Standard procedure set forth in Casehandling Manual Section 11336.4 requires the election clerk to send duplicate election kits to employees failing to sign their ballots "if sufficient time remains before the deadline." The Regional Director found that the failure to send Kurtz a second election kit in these circumstances was no more than a "minor deviation" from this procedure. We disagree.

The Regional Director found that the unsigned identification stub was received by the Regional Office "several days" after the April 1 receipt of the void ballot. The election clerk then determined, based on the key number revealed on the stub, that the stub belonged to voter Kurtz. Although the Regional Director also found that the precise date the stub was received was uncertain, there is no basis to dispute the fact that there was sufficient time left for the Regional Office to have furnished Kurtz with a duplicate election kit, as required by the Board's casehandling procedures, in time to meet the April 15 deadline for the return of the ballots to the Regional Office.² Failing to do so in the circumstances of this case was not a "minor" error, because it could be determinative of whether the Union won the election.

Thus, if Kurtz was an eligible voter, this error would require that the election be set aside. At the April 18 ballot count, however, the Petitioner was prevented from challenging Kurtz' ballot because the ballot was

² The Regional Director also noted that, at the time the identification stub was received, it could not be determined that it had been separated from the ballot, half received several days before. We find, however, that this uncertainty does not justify the failure to furnish Kurtz with a replacement election kit. Thus, although there may have been some doubt about whether the stub and the ballot belonged together, there was no doubt about the stub, which was identified by case and key number. Since the stub was detached and unsigned, whatever ballot it had once been associated with was void and known to be void. At that point, the source of the separated ballot in the Region's possession was immaterial to a decision to send a duplicate to Kurtz.

declared void. Subsequent to the count, the Petitioner submitted a written challenge to Kurtz' ballot, in the event that the Board should uphold the Employer's objection and reverse the Regional Director's decision to void his ballot. The Petitioner has challenged Kurtz' eligibility on the grounds that he is a spouse of a corporate officer. In light of our decision herein, it is now necessary to determine if Kurtz is an eligible voter in order to determine if the Region's failure to send him

a duplicate ballot warrants setting aside the election. Accordingly, we remand the case to the Regional Director for resolution of this challenge.

ORDER

The case is remanded to the Regional Director for determination of the Petitioner's challenge to the ballot cast by Daniel Kurtz.